

PLANNING COMMISSION REPORT



MEETING DATE: March 8, 2006

ITEM NO. _____ GOAL: Coordinate Planning to Balance Infrastructure

SUBJECT **Next Bar & Nightclub - 28-UP-2004**

REQUEST Request a conditional use permit for a bar.

Key Items for Consideration:

- Proposed Stipulations on the use permit
- Potential impacts on the daytime uses in the area
- Character of the neighborhood
- Parking Requirements

Related Policies, References:

General Plan, Downtown Plan

OWNER Gilbert Ortigas Indian Art
480-990-1808

APPLICANT CONTACT Brian Ruede
B J R Entertainment
480-206-8444

LOCATION 7111 E. 5th Avenue

BACKGROUND

Zoning.

The site is zoned C-2/DO. The C-2/DO zoning district allows for these types of bar land uses, subject to Conditional Use Permit approval. The approval process involves public hearings before both the Planning Commission and City Council.

Context.

This property is located approximately at the corner of 5th Avenue and Craftsman Court.

Adjacent Uses:

- North Mixture of retail and restaurant uses
- South Mixture of retail, bar, and restaurant uses
- East Mixture of retail and restaurant uses
- West Mixture of retail and restaurant uses

The surrounding properties are a mix of commercial/retail land uses, generally zoned either Downtown District, type 1 or commercial zoning with Downtown Overlay.



Operational Characteristics.

In April of 1999, at this address, a new nightspot was opened under the name The Velvet Room. The Velvet Room operated with a Series 12 Restaurant licence, but in a period of two years went out of business. The business re-opened under new ownership as NEXT in August of 2002. It began with a Series 12 license and initially offered a full dinner menu. NEXT operated this way until approximately November of 2004 when the owners decided to come forward with an application for a series 6 license because they acknowledged they would not meet the state's or city's 40% food sales threshold to qualify as a restaurant.

Currently, the business is open six nights each week and is closed Sundays. It opens at 9:00 PM and stays open until 2:00 AM. No food service is presently offered nighttime customers. The business, formerly Trader Vic's does have an operating kitchen that is leased during the day to provide catered/delivered meals to area customers. They estimate that nearly one hundred customers are served daily. The catering operation specializes in healthy/organic breakfasts, lunches and dinners.

**APPLICANT'S
PROPOSAL****Goal/Purpose of Request.**

The subject establishment has been operating as a restaurant/bar for some time, formerly Trader Vic's and the Velvet Room. At the time, the establishment operated with a Series 12 restaurant license. Given the change in zoning requirements, the applicant approached the City in early 2004 and indicated that they wanted to be defined as a bar (and obtain a Series 6 bar license from the State), and therefore not be required to sell at least 40% of the total gross sales in food. This change in use, from restaurant to bar, necessitated the need for a conditional use permit. Under the provisions of the zoning ordinance, there are 6 threshold criteria which define an establishment as a bar. If an establishment exhibits any one (1) of these six (6) criteria, the establishment is a bar. These criteria are as follows:

1. Bar service area is in excess of 15% of the Gross Floor Area
2. Kitchen is less than 15% of the Gross Floor Area
3. Age verification is requested for admittance
4. A cover charge is required for admittance
5. Less than forty percent of gross revenues are derived from the sale of prepared food
6. The business remains open and liquor sales continue but the full kitchen closes before 9 PM.

Under these criteria, NEXT is defined as a bar by the City's Zoning Ordinance, as they currently exhibit (at least) criteria #5 and 6.

Development information.

- Existing Use: Restaurant
- Proposed Use Bar (Open at 4 PM, main business starts at 10 PM)
- Buildings/Description: Existing building with restaurant and retail land uses

- Parcel Size: 10, 239 square feet
- Floor Area: 6,600 square feet for NEXT, which is part of a larger building which includes retail and restaurant uses and totals 10, 580 Square Feet for all uses.
- Parking Requirement: 98 Parking Stalls
- Parking Provided: 86 Stalls (Through Improvement District Credit and provisions of the Downtown Overlay Ordinance). See analysis below.

IMPACT ANALYSIS

Traffic.

This building has been in existence for many years, and many different uses have been in the structure. Street traffic in the area is predominantly generated by retail, restaurant, and gallery patrons during the day, and by entertainment uses during the evening. The peak traffic flow for a bar use occurs in the evening, when the surrounding retail establishments are closed; which is also typical of a restaurant use. The subject establishment does not open until 4 PM, and closes at 2:30 AM (The main business opens after 9 PM).

Parking.

The current uses on the property, including the proposed bar, retail, and restaurant, require 98 parking stalls per the current zoning requirements. The City approved a site plan in 1991 which indicates that 86 parking stalls were provided for the site. One of the key tenets of the Downtown Overlay program was to solidify how parking was calculated in the Downtown area. Essentially, applicants are only required to provide parking for the net difference between their existing use and the proposed use on the site. As such, the applicant must provide for the difference between what they have been approved for on the site (restaurant), and the “newly created” demand (changeover to a bar) by virtue of the intensification. This difference is 12 parking stalls. Staff has added a proposed condition of the use permit that the applicant must purchase those stalls through the “in lieu” program.

Purchase of In Lieu Parking Spaces

Pursuant to the recently approved City Council action, the purchase of any in lieu parking spaces requires City Council authorization and approval. The applicant is requesting the ability to purchase 12 stalls from the City as a portion of this application.

Water/Sewer.

The building is existing, and will not need any additional water or sewer facilities as a result of this request.

Police.

Adherence to the proposed Security and Maintenance plan will ensure proper safety for the patrons and surrounding environment. The information below represents the Police Department data over the past 12 months.

HISTORY OF PAST LIQUOR LICENSE VIOLATIONS:

There have been no liquor license violations in the last 12 months.

CALLS FOR SERVICE:

During the period of February, 2005 through February, 2005, there were 84 calls for service (CFS) at club NEXT. The calls were:

- 21 CFS related to public disturbance
- 11 CFS related to violence, primarily fighting
- 59 CFS related to property related crimes, alarm calls and miscellaneous calls

During this period, there were 26 departmental reports (DR's) taken using the address of club NEXT. The reports are as follows:

- 10 reports were completed for crimes against persons, primarily simple assault.
- 10 reports were taken for crimes against property, primarily theft.
- 3 reports were taken for liquor related crimes involving intoxicated drivers (DUI).
- 3 reports were taken for miscellaneous type crimes, primarily warrant arrests.

Code Enforcement.

In the past 3 years, there have been 8 inspections of the NEXT property, only 4 of which were complaint driven. In all situations, the owner of NEXT complied with Code Enforcement direction. There is a history of complaints in the area which are not completely attributable to any one business, however. These complaints usually stem from issues regarding maintenance and refuse in the area. This issue has been addressed in the proposed Security and Maintenance plan which has been approved by the City's Police Department.

Policy Implications.

The adoption of the bar conditional use permit process in August of 2003 indicated a policy shift towards regulating bars in the City of Scottsdale. The concern stemmed from 1) issues germane to having greater control over local land use issues than was pertinent under State statute with regard to bars; 2) the impact (total number) of bars in the Downtown, and relative proximity of those establishments to each other; and 3) the management of, and negative effects created by, those types of establishments.

The City has approved 2 Conditional Use Permits in the Downtown area since the requirement for a use permit was established in the Zoning Ordinance; at E4 (Goldwater north of 3rd Ave.) and Jamaican Blue (Scottsdale Rd. & 1st). The use permit process requires all potential "bar" owners to submit an application for a use permit, which requires public hearings before both the Planning Commission and City Council. This public hearing process requires applicants to submit and be stipulated to a Security and Maintenance Plan and appropriate conditions of approval which helps protect the public health, safety, and welfare.

At the time of the adoption of the ordinance requiring use permits for bars, the

subject establishment was operating with a State series 12 liquor license. Under the provisions of the City's zoning ordinance, the operational characteristics usually associated with this state liquor license are generally associated with a restaurant, though the subject operation never functioned as a traditional restaurant. However, in early 2004, the applicant approached the City and wished to secure a use permit, acknowledging that the establishment was not meeting the minimum food sales criteria outlined in both the City's zoning ordinance and State regulations. Since that time, the applicant has worked with the City Police Department, Planning Staff, and Code Enforcement to address the concerns regarding the potential negative effects of the bar use. The proposed Security and Maintenance Plan has been approved by the City Police Department.

Series 6 licenses in the Downtown

There has been discussion in the past at many public meetings about the proliferation of State Series 6 liquor licenses in the Downtown area. This discussion is germane to the proposed Use Permit being applied for in this application. Staff researched the Downtown area as a whole, and the immediately surrounding area for the proposed business. The following are the results:

- In the Downtown area, for the period from September 26, 2003 to February 24, 2006, there was a net decrease in Series 6 licenses from 33 total Series 6 licenses to 30 (Net Decrease = 3).
- In the area bounded by Indian School Road, Goldwater, the Canal Bank, and Scottsdale Road (During the same time period), there was a net increase in Series 6 licenses from 8 total Series 6 licenses to 9 (Net Increase = 1). This is attributable to NEXT being issued a Series 6 license during this time period. The City Council recommended approval of that Series 6 license at the time.

Use Permit Criteria.

Conditional use permits, which may be revocable, conditional, or valid for a specified time period, may be granted only when expressly permitted after the Planning Commission has made a recommendation and the City Council has found as follows:

*(The Following criteria taken verbatim from City of Scottsdale Municipal Code and the Staff Analysis **in bold font** follows, under in regular font. Some criteria are put together for analysis purposes, ie A1, A2, A3 below, etc. Staff has provided detailed analysis of the bar related impacts below in line item format.)*

- A. That the granting of such conditional use permit will not be materially detrimental to the public health, safety or welfare. In reaching this conclusion, the Planning Commission and the City Council's consideration shall include, but not be limited to, the following factors:
 1. Damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
 2. Impact on surrounding areas resulting from an unusual volume or character of traffic.

3. There are no other factors associated with this project that will be materially detrimental to the public.

Staff Analysis:

These are the general findings required of any conditional use permit in the City of Scottsdale. The referenced police reports above are not considered “above normal” for a commercial activity. Reports of vandalism in the area have been confirmed but are not attributable specifically to customers of NEXT. Further, strict adherence to, and enforcement of, the Security and Maintenance Plan is essential to ensure that no impacts (trash, deliveries, etc.) are created for other businesses in the area. In general, the granting of this use permit will not negatively affect the public health, safety, and welfare as it conforms with the zoning, meets the threshold criteria, and the impacts associated with the granting of this use permit, in this location, will not negatively affect the surrounding area.

- B. The characteristics of the proposed conditional use are reasonably compatible with the types of uses permitted in the surrounding areas.

Staff Analysis:

The characteristics of the proposed use, in this location, are compatible with the surrounding uses in so far that:

- There are other similar establishments, in the same zoning district, in close proximity to the proposed use;
- There has not been any extraordinary demand for law enforcement in the past 12 months at the proposed location;
- The impacts associated with this use, at this location, are generally consistent with the types of uses allowed in the C-2/DO zoning category.

The characteristics of the proposed use, in this location, are not compatible with the surrounding uses in so far that:

- The City has encouraged restaurants, high-end retail establishments, and art galleries to this general area of the Downtown and has sought to discourage the proliferation of bar uses in this area.

- C. The additional conditions specified in Section 1.403, as applicable, have been satisfied.

[C.1] *Bars, cocktail lounges, and/or after hours establishments.*

1. The use shall not disrupt existing balance of daytime and nighttime uses.

Staff Analysis:

This portion of the City is clustered with a mix of existing retail establishments, art galleries, restaurants and bars. The addition of a new bar in this area could impact the ability of the City to draw the types of businesses to the area which make the district successful as a restaurant and art gallery destination. While this application would formally change

the definition of the use at the subject site, the operational characteristics of the use will be substantially similar to what one might notice if they visited the site today, and should therefore not be considered a “new” bar, even though the zoning definition clearly categorizes the establishment as such and creates the requirement for the proposed Use Permit. City Council has the ability to approve or deny this, or any future request for bar CUP’s in this area, and this application does not represent a precedent for future applications.

2. The use shall not disrupt pedestrian-oriented daytime activities.

Staff Analysis:

The existing structure will remain in place. However, having a use at a “key” intersection in the Downtown area which does not open until late into the evening may have an impact on the ability of the City to retain and recruit successful daytime operators to the district. Essentially, there may be potential for a “dead spot” in the urban fabric of the daytime uses and pedestrian activity in this portion of the Downtown.

3. If the site is located within the downtown overlay district then:
 - a. The use shall not encourage displacement of daytime retail uses unless it can be demonstrated that the proposed use shall promote diversity of first floor uses along the street.
 - b. The required parking for the use shall be within six hundred (600) feet of the property and shall not be separated from the property by a major or minor arterial street.

Staff Analysis:

The use will occupy space that could be used for daytime retail businesses. As a bar, if the use operates after 5 PM, there is some overlap of the daily start of the bar use and the adjacent retail uses. Strict adherence to, and enforcement of, the Security and Maintenance Plan is essential to ensure that no impacts (trash, deliveries, etc.) are created for other businesses in the area.

All required parking would be provided through past approvals including improvement district credits, grandfathered parking, and the currently proposed purchase of in lieu parking stalls. The subject property itself does not have any parking, and as such any patrons of the proposed use would use City street parking or parking lots in the vicinity.

4. If the use is located within five hundred (500) feet of a residential use or district then:
 - a. The use shall not adversely impact residential uses.
 - b. The use shall provide methods of buffering residential uses.

Staff Analysis:

There are very few residential units located within 500 feet of the proposed use. Mostly, these are units above existing businesses and are generally 1 or 2 units at the most and are not adversely impacted by virtue of the orientation of the structure, the fact that the structure is primarily enclosed (ie very small patio) and the applicant will have to strictly adhere

to the proposed security and maintenance plan.

5. An active management and security plan shall be created, approved, implemented, maintained, and enforced for the business.

Staff Analysis:

A draft Security and Maintenance Plan has been submitted and approved by the Police Department and is proposed as a stipulation of the case. It is attached as Attachment #9. This plan will be implemented and enforced by the City's Code Enforcement Division.

6. The applicant shall provide, with the application for a conditional use permit, a written exterior refuse control plan which must be approved by the planning and development department staff as complying with the written guidelines of the department.

Staff Analysis:

A draft Security and Maintenance Plan has been submitted and is proposed as a stipulation of the case. This plan includes the proposed handling of refuse. This plan will be implemented and enforced by the City's Code Enforcement Division.

7. The applicant shall demonstrate how noise and light generated by the use shall be mitigated.

Staff Analysis:

The application is for a change of use in a pre-existing structure. The issue of noise is addressed in the applicant's security and maintenance plan, which has been approved by the City's Police Department. There is no proposed change to the exterior lighting of the structure.

8. The applicant shall demonstrate that the use shall meet required parking and shall not exceed capacity for traffic in the area.

Staff Analysis:

The application is deficient in parking by 12 parking stalls, and the applicant would be conditioned to pay for these stalls through the City's in lieu program. The traffic impacts have been analyzed above in this report, and no additional traffic will be generated should this application be approved.

9. After hours establishments must maintain a valid after hours establishment license.

Staff Analysis:

The applicant is not requesting an after hours establishment permit at this time.

Operation Limits.

The City has generally tried to encourage restaurant and retail operators to this portion of the Downtown Area. Staff approached the applicant regarding having the ability to be open during the daytime to help encourage other

daytime operators to locate to the area and not create a dark spot on the street. The applicant was receptive to this idea, but indicated that they would need time to put together a business model for such a venture. Staff found this to be acceptable and has stipulated two separate things:

- 1) The applicant will return with a business plan which will include a traditional daytime use at the location within 2 years.
- 2) The use permit will only be valid for two years, at which time the applicant will re-apply for an extension. This application will include public hearings before both the City's Planning Commission and City Council.

Community Involvement.

Several members of the community have contacted staff regarding potential areas of concern; most notably the requirements for a Security and Maintenance Plan, the perceived proliferation of bars in this area, and a change in the nature and character of the area. (See Attachment 6, Community Involvement) Copies of all letters received regarding this application are provided for the Commission's review within Attachment 6 of this report. The applicant held an open house meeting on September 23, 2004, pursuant to the City's requirement for citizen outreach.

Community Impact.

As mentioned, the proposed bar has been in existence (although operating without appropriate permits) for some time. As they were operating without permits, staff has analyzed the impact of the intensification from a restaurant use to a bar use.

The approval of future bar applications may substantially change the character and nature of the area in which this establishment is located. A certain amount of clustering of these types of establishments creates a sense of place and nighttime activity, which may be in conflict with the direction the City has taken in the recent past; trying to encourage restaurants and galleries to the area. There are currently 4 similar operations on Craftsman Court, and Next would be the 5th establishment.

Generally, this would not represent a proliferation of these types of uses in an area. Even if the City Council were to grant approval for this case, the approval would not imply that a precedent is being set. Each application is a unique, discretionary act the Council has the ultimate authority to approve or deny any future applications.

Conclusion.

Impacts can result from the changeover from a restaurant to a bar. The approval of a Security and Maintenance Plan with the Conditional Use Permit is required to address and mitigate those impacts. The city is not encouraging new bars to locate in the Craftsman's Court/5th Avenue/Marshall Way area, and future applications in this area will be critically evaluated. This business has been operating for some time, and the effects of the operation of this use on the area should have become apparent. The continuation of the use at this location, with a stipulation that the business come back to the City within two years with a daytime business plan, will not be detrimental to other uses in the

area. At the end of the two-year period, there will either be a daytime use operating on this site or a new CUP application will be processed and will reviewed by City Council.

STAFF**RECOMMENDATION****Recommended Approach:**

Approval of the Use Permit and the provision for the applicant to purchase 12 spaces from the in-lieu parking program.

RESPONSIBLE**DEPT(S)****Planning and Development Services Department**

Current Planning Services

STAFF CONTACT(S)

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APPROVED BY

Mac Cummins, AICP

Report Author



Randy Grant

Chief Planning Officer

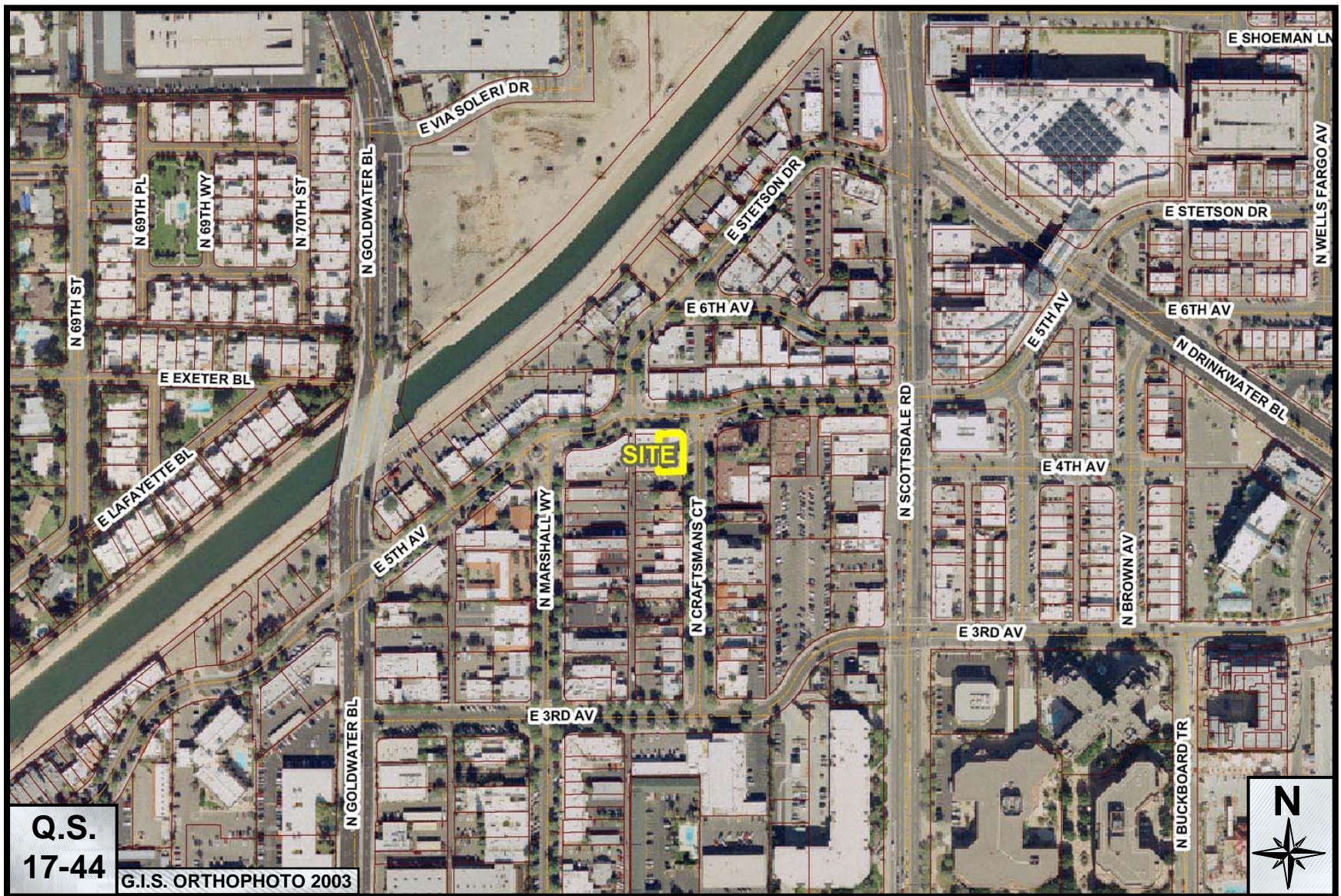
ATTACHMENTS

1. Applicant's Narrative
2. Context Aerial
- 2A. Aerial Close-Up
3. Land Use Map
4. Zoning Map
5. Proposed Stipulations (If Approved)
6. Citizen Involvement
7. City Notification Map
8. Site Plan
9. Security and Maintenance Plan



Next Project Narrative

1. The operation of Next Bar & Nightclub is an existing use, has not disrupted the balance between existing daytime and nighttime uses, and will in no way disrupt this balance in the future.
2. The operation of Next Bar & Nightclub is an existing use. Hours of operation consist of nighttime usage. Operations have not disrupted pedestrian-oriented daytime activities, and will in no way disrupt pedestrian-oriented daytime activities in the future.
3. Next Bar & Nightclub is located within the Downtown Overlay District.
 - a. Next Bar & Nightclub is an existing use, has not displaced daytime retail uses, and will in no way displace daytime retail uses in the future.
 - b. Next Bar & Nightclub is an existing use with a current and approved parking plan.
4. Next Bar & Nightclub is not located within 500 Feet of a residential district.
5. Next Bar & Nightclub is an existing use with a current management and security plan approved and on file with the City of Scottsdale. A copy of this plan is included with this application.
6. Next Bar & Nightclub is an existing use with a current written exterior refuse and control plan approved and on file with the City of Scottsdale. A copy of this plan is included with this application.
7. Next Bar & Nightclub is an existing use, has successfully mitigated noise and light considerations, and is compliant with all City of Scottsdale code enforcement. Future operations will in no way disrupt this compliance.
8. Next Bar & Nightclub is an existing use with a current and approved parking plan. Operations have not exceeded capacity for traffic in the area, and future operations will not disrupt this compliance.
9. Next Bar & Nightclub is not in operation after hours and as such licensing is not applicable.



Next Bar & Nightclub

28-UP-2004

ATTACHMENT #2

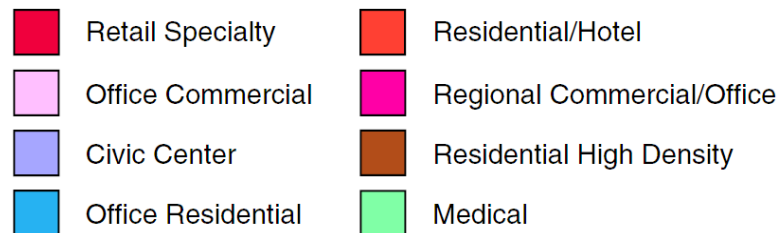
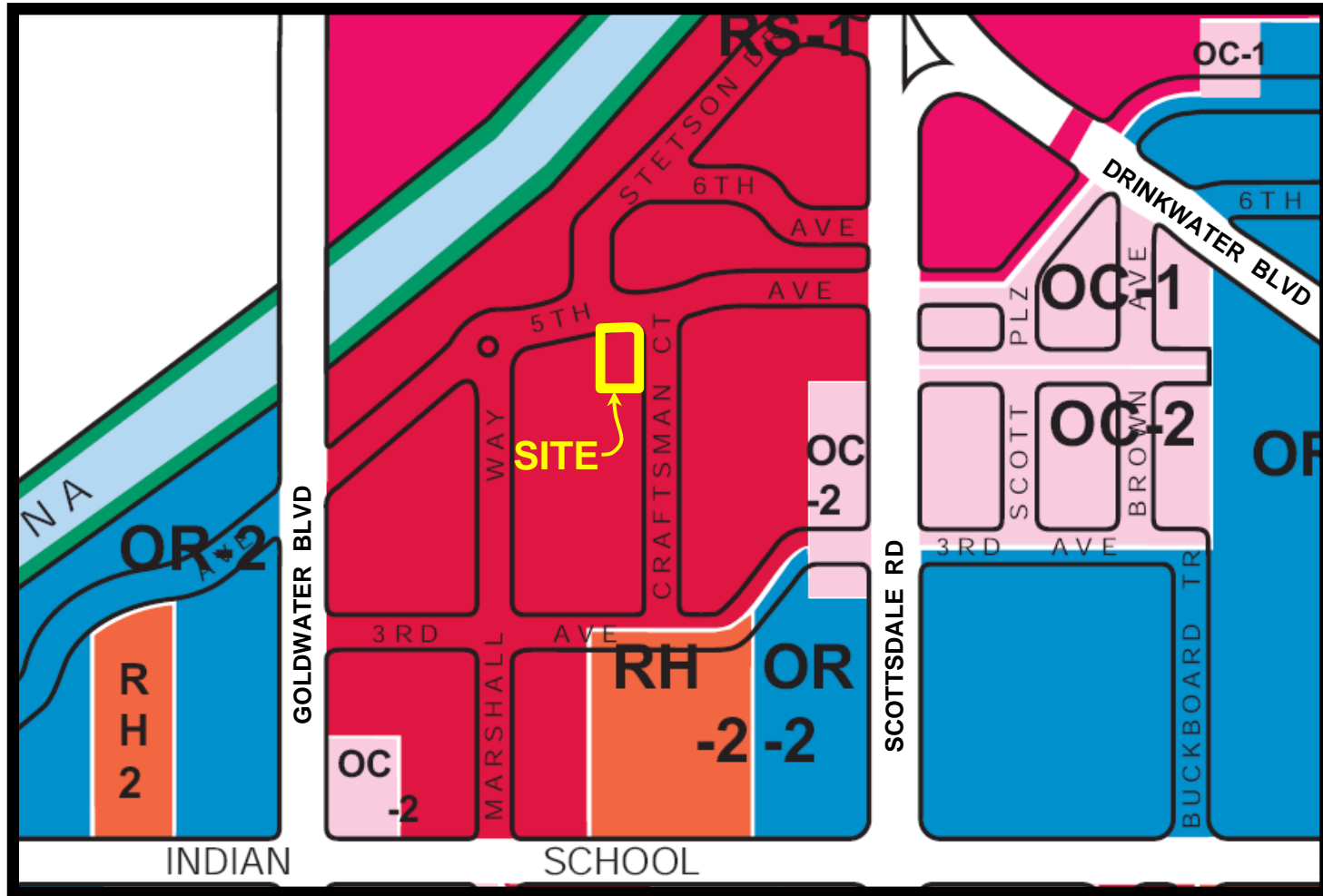


Next Bar & Nightclub

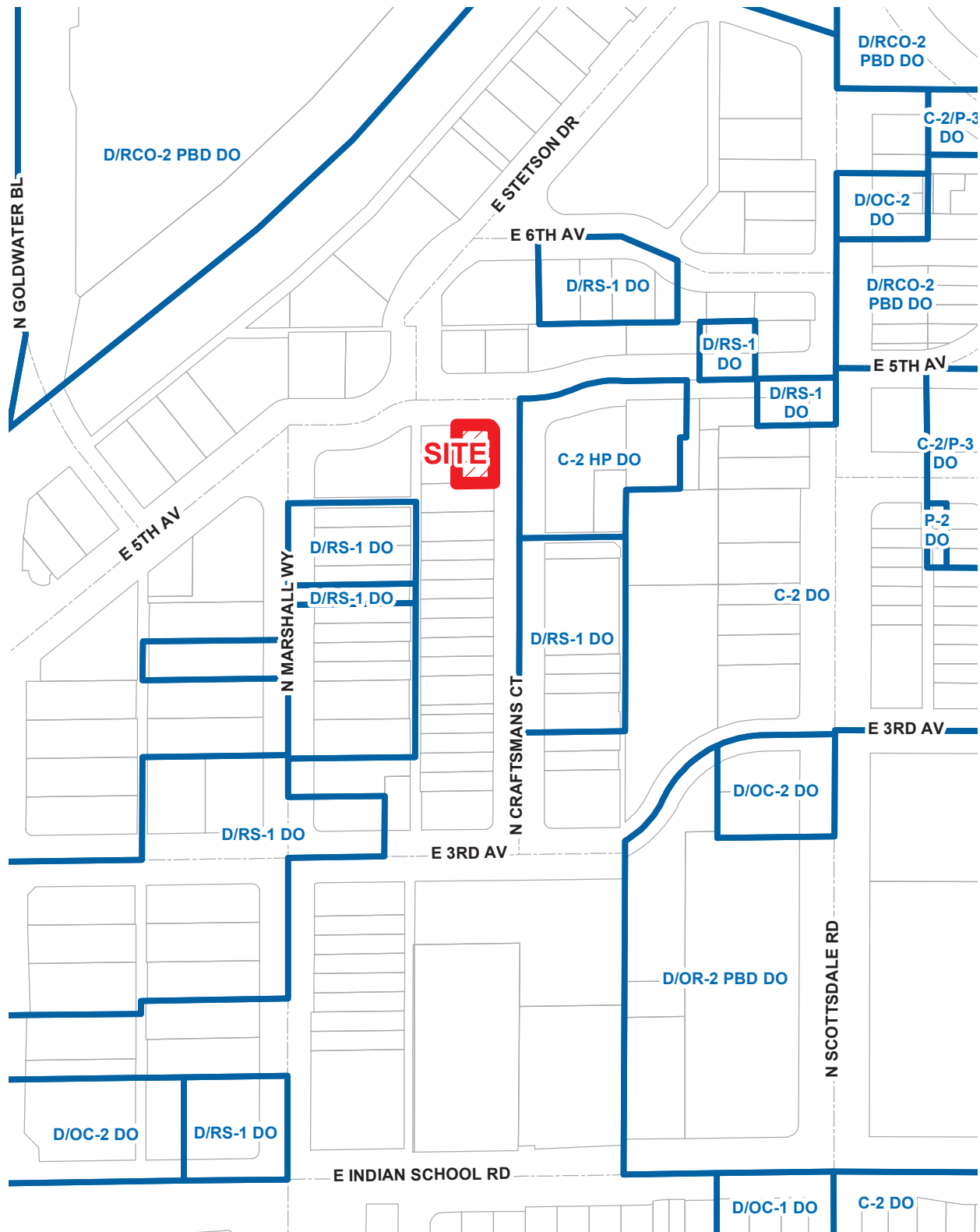
28-UP-2004

ATTACHMENT #2A

Downtown General Plan



28-UP-2004
ATTACHMENT #3



28-UP-2004

ATTACHMENT #4

CONDITIONS FOR CASE 28-UP-2004

PLANNING/ DEVELOPMENT

1. OPERATIONS. All operations on site shall comply with the following:
 - a. The Use Permit is restricted to the floor plan dated 9/9/04. Any change to this floor plan shall require an amendment to this Use Permit, or an entirely new Use Permit.
 - b. This use permit is approved for a "bar" use **only**, and no live entertainment is approved as part of this request. Any future live entertainment request shall be subject to a separate Conditional Use Permit.
 - c. All amplified music (Non live entertainment) shall not be heard, or have measurable noise, emitted outside of the building. All external doors shall remain closed but not locked during business hours.
 - d. There shall be no amplified music during times that state law prohibits the sale of liquor at this bar.
 - e. The bar operator(s) / merchant(s) shall maintain and conform to a Public Security and Maintenance Plan approved by the Scottsdale Police Department, on record with the City of Scottsdale, and shall keep a copy on site. Each year, prior to the anniversary of this use permit approval, the bar operator(s)/merchant(s) shall provide an update to the Public Security & Maintenance Plan to the Police Department and the Planning and Development Services Department. Such update shall state that the plan continues in effect as originally approved, or the update shall conform to the following: If there are any changes that modify the requirements or contents of the Public Security and Maintenance Plan, those changes shall be documented in a revised Public Security and Maintenance Plan, which shall be subject to approval by the Police Department and the Planning and Development Services Department.
 - f. The bar operator(s) / merchant(s) shall maintain and conform to a refuse and litter control plan approved by the City of Scottsdale's Planning and Development Services Department, and any other applicable departments, and keep a copy on site. The bar operator(s) / merchant(s) shall remove and dispose of litter and debris daily, to the satisfaction of City staff.
 - g. Exterior lighting facing the City parking area to the south shall be kept at a level so as to provide adequate lighting for patrons while not unreasonably disturbing surrounding commercial areas, to the satisfaction of city staff.
 - h. The applicant shall have 2 years to develop a business plan which will include operation of a daytime use at the location, in addition to the proposed "bar" use. This daytime use shall include daytime activities which shall be open during normal daytime business hours. At the end of the 2 year timeframe, the applicant shall reapply for an extension of the Use Permit (See condition N below). Failure to have a daytime use plan in place at the end of that two year period may be grounds for denial of the extension on the use permit.
2. ADMINISTRATIVE/PROCESS. The bar operator(s)/merchant(s) shall comply with the following:
 - l. This Conditional Use Permit shall not become valid until such time as the applicant has purchased 12 parking stalls through the in-lieu parking fund process.
 - m. This Conditional Use Permit shall become null and void if the "bar" use is abandoned for

more than one (1) year after beginning operation. If the use is abandoned beyond this one (1) year timeframe, a new Conditional Use Permit shall be required to operate a "bar" use at the subject property.

- n. This permit shall be valid for two years. After this period, the applicant may apply for a new Conditional Use Permit. This process will involve full public hearings through the normal Use Permit application process, including the payment of applicable fees, and public hearings before both the Planning Commission and City Council. The City shall review the establishment's activities over the course of the two year review period, and shall approve or deny the continued use of the property as a "bar" at that time.
- o. Any change in operator at the subject location shall require an administrative review by the Zoning Administrator for compliance to these stipulations and the approved Security and Maintenance Plan. Any deviation from any conditions of approval or change in floor plan shall be grounds for revocation of the Conditional Use Permit.

NEXT BAR & NIGHTCLUB

28-UP-2004

Attachment #6 CITIZEN PARTICIPATION REPORT

The above attachment is on file at the City of
Scottsdale Current Planning office,
7447 E Indian School Road, Suite 105.

Next Bar & Nightclub



ATTACHMENT #7

- ### Additional Notifications:

- Interested Parties
- Villa D'Este Improvement Association
- South Scottsdale Redevelopment Force
- Village of Pavoreal

**NEXT BAR & NIGHTCLUB
28-UP-2004**

**Attachment #9 SECURITY AND
MAINTENANCE PLAN**

The above attachment is on file at the City of
Scottsdale Current Planning office,
7447 E Indian School Road, Suite 105.